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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------------|
| 09/977,664 | 10/15/2001 | Robert D. Herpst | | 3468 |
| 26009 | 7590 | 11/23/2007 | | |
| ROGER M. RATHBUN 13 MARGARITA COURT HILTON HEAD ISLAND, SC 29926 | | | | |
| | | | EXAMINER ALEXANDER, LYLE | |
| | | | ART UNIT 1797 | PAPER NUMBER |
| | | | MAIL DATE 11/23/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/977,664

Applicant(s)

HERPST, ROBERT D.

Examiner

Lyle A. Alexander

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) -2,10-11,15-20,28,30-33,35-37,39-44 and 46-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) -2,10-11,15-20,28,30-33,35-37,39-44 and 46-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 10-11, 15-20, 28, 30-33, 35-37, 39-44 and 46-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagnon et al. in view of Eden et al. further in view of Applicants' admitted prior art (pages 3-8 of the original specification) or Izumi.

See the appropriate paragraphs of the prior Office action.

Response to Arguments

Applicant's arguments filed 9/13/07 have been fully considered but they are not persuasive.

Applicant's amendments have overcome the 35 USC 112 1st and 2nd paragraph rejections.

Pages 16-17 of the 9/13/07 remarks state the specification teaches in figures 3A, 4A and 5A cleaved alkali halide window have different properties than the blanks. The Office does not agree with this conclusion. Figures 3, 4 and 5 are show the differences between polished NACL and unpolished NACL blanks and not cleaved vs. uncleaved as suggested by Applicants. Additionally, figures 3-5 are directed to a NACL crystal which is not commensurate in scope with the pending claims that are directed to an alkali halide crystal.

Applicants states Gannon et al. cannot be applied against the instant claims because it is directed to a screen material for holding the sample. Gannon et al. has been applied as teaching the holder and not the alkali halide crystal. The secondary references are used to teach the claimed cleaved alkali halide crystal. Applicant's arguments against Gannon et al. individually, does not show nonobviousness where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant references the declaration of Dr. de Haseth. The Office notes the declaration is the opinion of Dr. de Haseth, which is held in high esteem by the Office. However, *In re Lindell*, 385 F.2d 453, 155 USPQ 521 (CCPA 1967) teaches an affiant's or declarant's opinion on the ultimate legal issue is not evidence in the case. In the absence of a factual declaration, Dr. de Haseth's opinion was not convincing to overcome the art of record.

Applicant state there is no motivation to combine Gagnon et al. with the Eden et al. The Office maintains there is sufficient motivation on the record for the combination.

Applicant state Izumi teaches high polishing is needed for wavelengths other than the infrared range. The Office agrees this is further motivation not to polish the crystal as it would not be required for the claimed infrared region.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander
Primary Examiner
Art Unit 1797

